Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of GTE Corporation, Transferor, And Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control	))))))))	CC Docket No. 98-184

COMMENTS OF WORLDCOM, INC.

Pursuant to the Public Notice released on March 12, 2002 (DA 02-567) ("Notice"), WorldCom, Inc. ("WorldCom") hereby submits comments concerning Verizon Communication, Inc.'s ("Verizon") request that the Federal Communications Commission ("Commission" or "FCC") count Verizon's investment in NorthPoint Communications Group, Inc. ("NorthPoint") toward its Out-of-Region merger obligation. The Commission should flatly deny this request as it flies in the face of both the text and spirit of the Bell Atlantic/GTE Merger Order.[1]

The Merger Order requirement at issue here (the "Out-of-Region" requirement) is found at paragraph 43 the Merger Conditions. That requirement provides:

> Bell Atlantic/GTE will spend a total of at least $500 million (the "Out-of-Region Expenditure") between the Merger Closing Date and the end of the 36th month after the Merger Closing Date *to provide services*, including resale, that compete with traditional local telecommunications services offered by incumbent local exchange

[1] *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order in CC Docket No. 98-184 (rel. Jun. 16, 2000) ("*Merger Order*").

> carriers or to provide Advanced Services to the mass market ("Competitive Local Service") outside the Bell Atlantic and GTE Service Areas ("Out-of-Region Markets"), within the United States.[2]

Although the Condition unambiguously requires Verizon to spend $500 million "to provide services," Verizon now asks the Commission to credit a failed investment it "was forced to write off,"[3] for which it "ultimately retained no value,"[4] and which is plainly not being used to provide any services whatsoever. Specifically, in a letter dated March 7, 2002, Verizon asked the Commission to apply a credit for "those portions of … [Verizon's $150 million] NorthPoint investment that are attributable to out-of-region and out-of-region facilities expenditures."[5] If Verizon is referring to all or most of the entire $150 million investment, as its letter suggests,[6] it is requesting that the Commission excuse *30%* of the $500 million out-of-region requirement mandated by the Merger Order for investments in a venture where no service was ever offered or a single piece of infrastructure ever deployed.[7]

Verizon's request is hopelessly inconsistent with the language and intent of the Merger Order and Merger Conditions. The Merger Order unambiguously requires Verizon to spend $500 million "*to provide* services. . . that compete with traditional local telecommunications services. . . ." This requirement cannot be satisfied by a failed venture that does not result in the provision of *any* services or deployment of any infrastructure. Their request is similarly prohibited by paragraph 44 of the Merger Conditions, which requires that "at least 50 percent of the Out-of-Region Expenditure shall be used to construct, acquire, lease, use, obtain, or provide

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[2] *Id*, Appendix D, para. 43 (emphasis added).
[3] Letter from Gordon R. Evans, Vice President, Federal Regulatory, Verizon Communications, Inc., to Carol Mattey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, at 1 (March 7, 2002) ("*NorthPoint Request Letter*").
[4] *Id*.
[5] *Id*.

facilities, operating support systems, or equipment that are used to serve customers in Out-of-Region Markets ('Facilities Expenditure')."[8] This "Facilities Expenditure" requirement was plainly just that – a requirement that money be expended to purchase or lease network infrastructure that is in fact used to serve customers out of region. General expenditures on failed business ventures do not satisfy this requirement.[9]

Verizon's letter does not directly address this, but instead asserts only that it "did 'spend' money to 'obtain' 'facilities, operating support systems, or equipment that are used to serve customers in Out-of-Region Markets.'. . . That the final merger was never completed does not alter the fact of Verizon's payment."[10] But the relevant question is not whether Verizon made a payment, it is whether that payment was used to purchase or lease facilities that are, in fact, used to "provide competitive local service and associated services outside of the Bell Atlantic and GTE legacy service areas."[11] As to that question there is no dispute. Because Verizon has not invested in facilities that are used to provide competitive services, its expenditure does not meet the Merger Order's express, unambiguous, requirements.

Verizon's request is similarly inconsistent with the objectives of the Merger Conditions. In the Merger Order, the Commission recognized that, absent conditions, the merger could not

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[6] Verizon's letter appears to be requesting credit for the entire $150 million. It does not itemize in-region versus out-of-region expenditures associated with its NorthPoint investment and, in the last sentence of the letter, Verizon states that it "should receive the appropriate credit for this expenditure," suggesting it means the entire $150 million.
[7] *See Merger Order*, Appendix D, para. 43.
[8] *Id.,* para. 44.
[9] Verizon's attempt to shoehorn its failed investment into the facilities expenditure requirement is unsurprising, given that a large portion of Verizon's remaining commitment centers on the facilities expenditure. *See* Letter from Carol Mattey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission to Jeffrey Ward, Senior Vice President – Regulatory Compliance, Verizon Communications, Inc., at 2 (rel. Nov. 20, 2001) ("*Out-of-Region Status Letter*"). In the letter, the Commission found that Verizon had satisfied $297.4 million of its general Out-of-Region Expenditure requirement and $113.4 million of its "Facilities Expenditure." Consequently, Verizon must still satisfy a $202.6 million total Out-of-Region Expenditure, of which $136.6 million must be "Facilities Expenditures" (i.e., $250 million - $113.4 million). It is inconceivable, however, that the NorthPoint investment – an investment where Verizon ultimately retained "no value" – could satisfy this requirement.
[10] *NorthPoint Request Letter* at 2.
[11] *Merger Order*, para. 319.

satisfy the public interest standard: "[w]e believe that the Applicants' package of conditions, with the modifications by this Commission, alters the public interest balance of the proposed merger by mitigating substantially the potential public interest harms while providing additional public interest benefit."[12] As the Merger Order itself makes clear, one of the "primary public interest goals" of the Merger Conditions was fostering out-of-territory competition.[13] The Commission specifically noted that the Out-of-Region Expenditure requirements would serve "to ensure that residential consumers and business customers outside of Bell Atlantic/GTE's territory will benefit from meaningful, facilities-based competitive service."[14] But money spent on a venture that does not result in any service to customers plainly does not foster any competition at all, much less "meaningful, facilities-based competitive service." And, of course, if a substantial portion of Verizon's commitment to compete outside its region through an investment in facilities is excused, the Commission's attempt to spur out of region, facilities-based competition will fail. There is simply no reason to allow Verizon to evade the commitment it made to secure approval of its merger.

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[12] *Id.*, para. 247.
[13] *Id.*, para. 251.
[14] *Id.*, para. 321.

Verizon provides no credible basis for avoiding the obligations of the Merger Order. For the reasons above, it is critical that the Commission ensures that the spirit and text of the Merger Order are preserved and, to that end, it should deny Verizon's request.

Respectfully submitted,

WorldCom, Inc.

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Dated: March 19, 2002

Certificate of Service

I, Lonzena Rogers, do hereby certify, that on this nineteenth day of March 2002, I have caused to be delivered by United States Postal Service first class mail and facsimile a true and correct copy of WorldCom, Inc.'s Comments in the matter of CC Docket No. 98-184 on the following:

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